



**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

JOE FOSS BUILDING  
523 E. CAPITOL AVE  
PIERRE SD 57501-3182  
danr.sd.gov

August 16, 2023

**NOTICE OF HEARING**

TO: Redfield SCS Capture LLC  
c/o James Powell  
2321 North Loop Drive, Suite #221  
Ames IA 50010

Debra Curtis  
1026 4<sup>th</sup> Street West  
Redfield SD 57469

Brad Hekrdle  
16906 389<sup>th</sup> Avenue  
Redfield SD 57469

Dave and Stacey Marlow  
38928 US Hwy 212  
Redfield SD 57469

Charles McGuigan, Deputy Attorney General  
1302 East Highway 14, Suite 1  
Pierre SD 57501-8501

FROM: Eric Gronlund, Chief Engineer  
SD DANR, Water Rights Program

SUBJECT: Notice of Hearing on Water Permit Application No. 8756-3, Redfield SCS Capture LLC

Petitions have been filed in the matter of Water Permit Application No. 8756-3 in response to the Notice of Application published in the Redfield Press and American News on July 12, 2023. This notice schedules a hearing on Application No. 8756-3 before the South Dakota Water Management Board.

Water Permit Application No. 8756-3 proposes to appropriate up to 64.5 acre-feet of water annually at a maximum pump rate of 0.10 cubic feet of water per second from one well to be completed into the Dakota Aquifer (approximately 1,100 feet deep) located in the SE1/4 NW 1/4 Section 26 for industrial use within Section 26; all in T117N-R64W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends approval of Application No. 8756-3 with qualifications because 1) unappropriated water is available, 2) existing domestic water uses and water rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest as it pertains to matters within the regulatory authority of the Water Management Board.

The Water Management Board will conduct a hearing to consider Application No. 8756-3 at 10:00 AM (Central Time), on Wednesday, October 4, 2023, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. The time is an estimate and may be delayed due to prior items on the agenda. Notice will be provided if there is a change in the time or date of the hearing.

The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny the application after it reaches a conclusion based on the facts presented at the public hearing.



## Notice of Hearing – Application No. 8756-3

August 16, 2023

The October 4, 2023 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition opposing the application. A request for an automatic delay must be filed by **August 28, 2023**. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol Ave, Pierre SD 57501." If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to the applicant and the petitioners regarding the time, date, and location.

The hearing is an adversary proceeding and any party has the right to be present at the hearing and may be represented by legal counsel. As a legal entity, Redfield SCS Capture LLC is required to be represented by legal counsel in this administrative proceeding. These and other due process rights will be forfeited if they are not exercised at the hearing. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Enclosed is a copy of the report, recommendation, affidavits of publication, and the petitions filed in the matter of Water Permit Application No. 8756-3. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. The information being provided to you is also being sent to the Board members in advance of the hearing. Notices, orders, other pleadings, and comments filed in this matter are posted on DANR's contested case page at <https://danr.sd.gov/public/ContestedCase.aspx>. In addition, enclosed are two documents intended to acquaint parties with the hearing process entitled "Procedure for Hearings before the Water Management Board" and "Summary of South Dakota Water Laws and Rules." If you intend to participate in the hearing, you are encouraged to review these documents prior to the hearing.

Contact Ron Duvall at the above Chief Engineer's address to request a copy of the staff report, recommendation, application, or other information related to the application. Notice is given to individuals with disabilities that the meeting is being held in a physically accessible location. Individuals requiring assistive technology or other services in order to participate in the meeting or materials in an alternate format should contact Brian Walsh, Nondiscrimination Coordinator, by calling (605) 773-5559 or by email at [Brian.Walsh@state.sd.us](mailto:Brian.Walsh@state.sd.us) as soon as possible but no later than two business days prior to the meeting in order to ensure accommodations are available.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by direct mail to you, and the applicable date to give notice to the Chief Engineer is August 28, 2023. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right, the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; Board Rules ARSD 74:02:01:01 thru 74:02:01:24.02 and ARSD Chapter 74:02:04.

Questions regarding the hearing process may be directed to Ron Duvall, Water Rights Program at (605) 773-3352 or [ron.duvall@state.sd.us](mailto:ron.duvall@state.sd.us).

CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice of Hearing dated August 16, 2023, with attachments regarding Water Permit Application No. 8756-3 – Redfield SCS Capture LLC, was served upon the following by enclosing the same in envelopes with first class postage prepaid, and depositing said envelopes in the United States mail on August 16, 2023.

Redfield SCS Capture LLC  
c/o James Powell  
2321 North Loop Drive, Suite #221  
Ames IA 50010

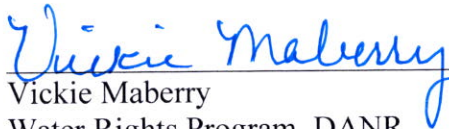
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Redfield SD 57469

Dave and Stacey Marlow  
38928 US Hwy 212  
Redfield SD 57469

Above also Sent Inter-office to:


Charles McGuigan, Deputy Attorney General  
1302 East Highway 14, Suite 1  
Pierre SD 57501-8501

  
Vickie Maberry

Water Rights Program, DANR

STATE OF SOUTH DAKOTA   )  
  ) SS  
COUNTY OF HUGHES                    )

Sworn to, before me, this 16 day of August, 2023.

  
Rachel Rodriguez  
Notary Public  
My Commission expires May 16, 2029

